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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

18 LULULEMON ATHLETICA  
19 CANADA INC. AND LULULEMON  
20 USA, INC.,

21 Plaintiffs,

22 v.

23 COSTCO WHOLESALE  
24 CORPORATION,

25 Defendant.

Case No. 2:25-cv-05864-FLA(AJRx)  
Hon. Fernando L. Aenlle-Rocha

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR JACQUES MORET  
INC. TO INTERVENE AS  
DEFENDANT PURSUANT TO  
RULE 24**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Pursuant to Fed. R. Civ. P. 24, Proposed Intervenor, Jacques Moret Inc. (“Intervenor” or “Moret”) by and through its undersigned counsel, respectfully submits this memorandum of law in support of its Motion to Intervene in the Action between Lululemon Athletica Canada Inc. and Lululemon USA, Inc. (collectively, “Plaintiffs” or “Lululemon”) and Costco Wholesale Corporation (“Defendant” or “Costco”). As set forth below, neither Lululemon nor Costco oppose Moret’s motion to intervene.

Moret should be granted intervention in this action because it is the designer, importer, and supplier of the DANSKIN® and JOCKEY® products accused of trade dress, trademark, patent infringement and unfair competition in this case (the “Moret Accused Products”). Moret has a clear interest in this litigation and the right to be a party defendant. The issues to be resolved in this litigation are of critical importance to Moret and this litigation will address questions involving the marketing, sale, and distribution of the Moret Accused Products for Costco and any additional retailers or licensees authorized by Moret to market, sell, or distribute the Moret Accused Products. As the designer, importer, and supplier of the Moret Accused Products, Moret has a unique interest in the resolution of these issues and its rights in the Moret Accused Products may be harmed if not permitted to intervene. The relief requested by Moret flows from that recognition.

Moret respectfully requests that it be permitted to intervene as of right under Fed. R. Civ. P. 24(a)(2), or, in the alternative, that this Court allow Moret to permissively intervene under Fed. R. Civ. P. 24(b)(1)(B). Moret further seeks leave to file an Answer, Affirmative Defenses and Counterclaims, with Moret’s proposed pleading accompanying this Memorandum as Exhibit A.

**II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

For over 40 years, Moret has been a leading designer, importer and supplier of apparel and accessories (including women’s activewear) under a number of brands including the Danskin and Jockey brands. Declaration of Eddie Sassoon (“Sassoon Dec.”), at ¶5. As such, Moret understands the value of intellectual property and respects the intellectual property rights of others.

One of Moret’s customers is Costco. *See* Sassoon Dec. at ¶10. Moret has supplied Costco with innovative and high-quality products, including the Moret Accused Products. *Id.* As part of Moret’s supply agreements with Costco, Moret agreed to indemnify Costco in the case of infringement claims asserted against Costco with respect to Moret’s products. *Id.* The Moret Accused Products are thus subject to such an indemnification. *Id.* Prior to the filing of the present action, Moret, Costco, and Lululemon discussed Lululemon’s potential assertion of infringement claims with respect to some of the Moret Accused Products after Costco tendered its demand for indemnity to Moret. *Id.*, at ¶13.

On June 27, 2025, Lululemon filed suit against Costco claiming Costco’s sales of six products, including the Moret Accused Products, constituted federal and state trademark and trade dress infringement, as well as federal patent infringement, and unfair competition, among others, with respect to Lululemon’s intellectual property rights. Dkt. No. 1. On July 21, 2025, the parties stipulated to a thirty-day extension of time for Costco to file a responsive pleading. Dkt. No. 23. Costco filed its Answer on August 21, 2025—mere days ago—and no date has been set for a Scheduling Conference. Moreover, when the parties met and conferred pursuant to Local Rule 7-3, counsel for both parties indicated that they do not oppose Moret’s motion to intervene. Declaration of Matthew Barkan (“Barkan Dec.”), at ¶5. Now, less than two months after the Complaint was filed, Moret has carefully considered its interests affected by this litigation and respectfully moves to intervene.

1 **III. LEGAL STANDARD**

2 **A. Intervention as of Right Under Rule Fed. R. Civ. P. 24(a)(2)**

3 Fed. R. Civ. P. 24(a)(2) provides that:

4 On timely motion, the court must permit anyone to intervene who: [... ]  
5 (2) claims an interest relating to the property or transaction that is the  
6 subject of the action, and is so situated that disposing of the action may as  
7 a practical matter impair or impeded the movant's ability to protect its  
8 interest, unless existing parties adequately represent that interest.

9 Fed. R. Civ. P. 24 is liberally construed to favor proposed intervenors. *Sw. Ctr.*  
10 *for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001). The Ninth Circuit  
11 instructs that so long as the moving papers state the legal and factual grounds for the  
12 motion, the proposed intervenor has provided the Court with sufficient basis to grant  
13 intervention pursuant to Fed. R. Civ. P. 24. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966  
14 F.2d 470, 474 (9th Cir. 1992). *See also* Fed R. Civ. P. 24 Advisory Committee's Note  
15 (1966) ("If an absentee would be substantially affected in a practical sense by the  
16 determination made in an action, he should, as a general rule, be entitled to intervene.").

17 A party seeking to intervene as of right must satisfy the Ninth Circuit's four-part  
18 test, which requires: "(1) the application for intervention must be timely; (2) the  
19 applicant must have a 'significantly protectable' interest relating to the property or  
20 transaction that is the subject of the action; (3) the applicant must be so situated that the  
21 disposition of the action may, as a practical matter, impair or impede the applicant's  
22 ability to protect that interest; and (4) the applicant's interest must not be adequately  
23 represented the existing parties." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 817  
24 (citation omitted).

25 **B. Permissive Intervention Under Fed. R. Civ. P. 24(b)**

26 Alternatively, Fed. R. Civ. P. Rule 24(b) provides for permissive intervention as  
27 follows:  
28



1 On timely motion, the court may permit anyone to intervene who: [...]  
2 (B) has a claim or defense that shares with the main action a common  
3 question of law or fact.

4 Fed. R. Civ. P. rule 24(b)(1)(B).

5 The Ninth Circuit has interpreted permissive intervention under Rule 24(b)(1)(B)  
6 to require proposed intervenors to show: “(1) independent grounds for jurisdiction; (2)  
7 the motion is timely; and (3) the applicant’s claim or defense, and the main action, have  
8 a question of law or a question of fact in common.” *Nazomi Commun., Inc. v. Nokia*  
9 *Corp.*, No. SACV 10-151 DOC (RNBx), 2010 WL 11508956, at \*5 (C.D. Cal. June 21,  
10 2010) (citing *Nw. Forest Resource Council v. Glickman*, 82 F.3d 825, 839 (9th Cir.  
11 1996)). Once the proposed intervenor makes such showings, the court considers other  
12 factors such as “the nature and extent of the intervenors’ interest” and “whether the  
13 intervenors’ interests are adequately represented by other parties.” *Spangler v.*  
14 *Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Additionally, the  
15 court must consider “whether the intervention will unduly delay or prejudice the  
16 adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

#### 17 **IV. ARGUMENT**

##### 18 **A. The Court Should Grant Intervention as of Right Under Fed. R. Civ.** 19 **P. 24(a)(2)**

20 Moret, as the designer, importer, and supplier of the Moret Accused Products, is  
21 entitled to intervene as of right in this action.

22 As discussed below, because Moret’s motion fully satisfies all four criteria for  
23 intervention as of right under Fed. R. Civ. P. 24(a)(2), this Court should grant Moret’s  
24 motion.

##### 25 **1. The Motion to Intervene is Timely**

26 Moret’s Motion to Intervene is timely. Courts look to three factors when  
27 considering timeliness: (i) the stage of the proceeding; (ii) prejudice to other parties,  
28

1 and (iii) the reason for and length of the delay. *W. Watersheds Project v. Haaland*, 22  
2 F.4th 828, 835-36 (9th Cir. 2022) (citation omitted).

3 First, this action is in its nascent stages, with Costco's responsive pleading filed  
4 a few days ago and no Initial Conference scheduled. *See Nazomi*, 2010 WL 11508956  
5 at \*5 (motion to intervene was timely where there was no scheduling order entered and  
6 discovery had not started). Upon information and belief, no discovery has started, and  
7 no motions have been filed by any party, other than the instant motion. Barkan Dec., at  
8 ¶4. In fact, Lululemon and Costco stipulated to a thirty-day extension of time for Costco  
9 to file a responsive pleading. Dkt. No. 23. Ninth Circuit precedent further cements the  
10 timeliness of this motion, with many motions to intervene being granted many months  
11 or even years after an initial complaint was filed because the proposed intervenor moved  
12 diligently to intervene once they knew their interests would not be adequately  
13 represented. *See, e.g., W. Watersheds Project*, 22 F.4th at 839-40; *Smith v. Los Angeles*  
14 *Unified Sch. Dist.*, 830 F.3d 843, 859-60 (9th Cir. 2016); *United States v. State of*  
15 *Oregon*, 745 F.2d 550, 552-53 (9th Cir. 1984). As such, the first factor weighs in favor  
16 of timeliness.

17 Second, there is no prejudice to Lululemon or Costco if Moret is permitted to  
18 intervene, particularly given the early stage of the case and that both parties to the  
19 litigation are and have been fully aware of Moret's interest in this action for months  
20 prior to its filing. Sassoon Dec., at ¶13; *see Nazomi*, 2010 WL 11508956 at \*5 (motion  
21 to intervene was timely where there was no scheduling order entered and discovery had  
22 not started, and no prejudice to parties in action because supplier's presence would aid  
23 in expediting discovery). Moreover, there is no prejudice to Costco because Costco does  
24 not oppose this Motion. Barkan Dec., at ¶5. Thus, the second factor weighs in Moret's  
25 favor.

26 Third, Moret has not delayed in bringing this motion to intervene. *See Nazomi*,  
27 2010 WL 11508956 at \*5 (motion to intervene was timely where there was no  
28

1 scheduling order entered and discovery had not started). Moret moved to intervene  
2 promptly after recognizing it needed to do so to adequately protect its interests in this  
3 litigation. Sassoon Dec., at ¶14.

4 Accordingly, considering all of the factors, Moret has acted reasonably and  
5 promptly in bringing this current motion.

## 6 **2. Moret Has A Significant Protectable Interest in this Action**

7 Moret has also demonstrated the requisite “significantly protectable interest  
8 relating to the property or transaction that is the subject of the action” pursuant to  
9 FRCP 24(a)(2) for intervention as of right. *See Southwest Center for Biological*  
10 *Diversity*, 268 F.3d at 817. To satisfy this factor, it is sufficient that “the interest is  
11 protectable under some law, and that there is a relationship between the legally  
12 protected interest and the claims at issue.” *Wilderness Soc’y v. U.S. Forest Serv.*, 630  
13 F.3d 1173, 1179 (9th Cir. 2011); *Southwest Center for Biological Diversity*, 268 F.3d  
14 at 818.

15 No specific legal or equitable interest need be established to satisfy this test.  
16 *Wilderness Soc.*, 630 F.3d at 1179. Instead, the interest test directs courts to make a  
17 practical, threshold inquiry, and is “primarily a practical guide to disposing of lawsuits  
18 by involving as many apparently concerned persons as is compatible with efficiency  
19 and due process.” *Id.* (citation omitted). This test is construed “broadly in favor of  
20 proposed intervenors.” *Id.* (citation omitted). The Ninth Circuit has held that where  
21 “an absentee would be substantially affected in a practical sense by the determination  
22 made in an action, he should, as a general rule, be entitled to intervene.” *Southwest*  
23 *Center for Biological Diversity*, 268 F.3d at 818 (quoting Fed. R. Civ. P. 24 advisory  
24 committee’s note).

25 Here, Moret has a direct, substantial, and legally protectable interest in this  
26 litigation because Moret is the designer, importer, and supplier to Costco of the Moret  
27 Accused Products. Sassoon Dec., at ¶8; *see, e.g., Nazomi*, 2010 WL 11508956 at \*3  
28

(intervenor had significant protectable interest where the products they designed and sold to defendants were components in every accused product in the lawsuit); *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-CV-00235-JRG, 2017 WL 6059303 at \*4 (E.D. Tex. Dec. 7, 2017) (granting intervention of right where manufacturers products sold by retailer were “focus of the litigation”). Moret’s direct interest in the ongoing import and distribution of these products is put at risk by Lululemon’s allegations of infringement. *See, e.g., Team Worldwide Corp.*, 2017 WL 6059303 at \*4 (Three manufacturers were granted intervention of right in part because their products were “put at risk” by infringement claims.); *Nazomi*, 2010 WL 11508956 at \*3 (designer-supplier intervenor’s ability to sell products to customers was “threatened” by plaintiff’s infringement claims); *LG Elecs. Inc. v. Q-Lity Comput. Inc.*, 211 F.R.D. 360, 363-66 (N.D. Cal. 2002) (Intervention allowed where products were put at risk by proposed amended complaint and the products were at “the heart of the litigation”).

Moreover, Moret’s interest in this case extends beyond Costco’s sale of the Moret Accused Products, as Moret supplies at least one of the Moret Accused Products to at least one other customer in the United States. *Sassoon Dec.*, at ¶11. This fact presents Moret with the possibility of future lawsuits, either directly or through Moret’s other customers, which would be an inefficient use of Moret’s and Lululemon’s resources. *See Select Retrieval, LLC v. ABT Elecs.*, No. 11 C 03752, 2013 WL 6576861, at \*2 (N.D. Ill. Dec. 13, 2013) (finding intervention of right supported by fact that intervenor’s “other customers” were not accused of infringement, and “[intervenor] (through its customers) would be subject to” future lawsuits with both parties “forced to proceed inefficiently in piecemeal fashion”); *cf. Nazomi*, 2010 WL 11508956 at \*3 (significant protectable interest test “is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.”) (citation omitted).

1 Additionally, should the Moret Accused Products be found to infringe in this action,  
2 Moret's relationships with its other customers may be harmed. *See Indus. Tech.*  
3 *Research Inst. v. LG Elecs., Inc.*, No. 3:13-CV2016-GPC-WVG, 2014 WL 5325709,  
4 at \*4 (S.D. Cal. Oct. 17, 2014) (finding (while undisputed) a protectable interest  
5 where "[intervenor] may be unable to sell [the accused product] to U.S. customers if  
6 Plaintiff were to succeed in this litigation," which may "adversely impair  
7 [intervenor's] significantly protectable interest"); *Nazomi*, 2010 WL 11508956 at \*4  
8 (designer-supplier intervenor's relationships with its customers would potentially be  
9 "frustrated" by an adverse judgment).

10 Finally, Moret is obligated to indemnify Costco against Lululemon's claims.  
11 *Sassoon Dec.*, at ¶10. Ninth Circuit Courts have found that where a party has tendered  
12 demands for indemnification to the proposed intervenor, there is a protectable interest  
13 to permit the proposed intervenor to intervene. *See Ancora Techs., Inc. v. Toshiba*  
14 *America Info. Sys., Inc.*, No. SA CV 08-0626 AG (MLGx), 2008 WL 4326788, at \*1  
15 (C.D. Cal. Sept. 22, 2008) (non-party permitted to intervene as of right in action  
16 accusing non-party's customers of patent infringement, noting defendants had  
17 tendered demands for indemnification and defense to the non-party); *cf. Int'l Bus.*  
18 *Machines, Corp. v. Conner Peripherals, Inc.*, No. C-93-20117 RPA (EAI), 1994 WL  
19 706208, at \*4-\*5 (N.D. Cal. Dec. 13, 1994) (non-party permitted to intervene as of  
20 right in action accusing its customers of patent infringement; intervenor had a  
21 significant protectable interest because it had agreement to indemnify its customers).

22 Accordingly, Moret satisfies the "significantly protectable interest" requirement  
23 because it is entitled to vigorously defend the Moret Accused Products against  
24 Lululemon's claims that could impact Moret's products and business relationships  
25 well beyond the confines of this litigation.

1                   **3.     Moret’s Interests in the Case Will Be Impaired if Intervention**  
2                   **is Denied**

3           As the designer, importer, marketer, seller, and distributor of the Moret Accused  
4 Products, denial of this Motion would be a practical impairment of Moret’s ability to  
5 protect its interests in the Moret Accused Products. A prospective intervenor “has a  
6 sufficient interest for intervention purposes if it will suffer a practical impairment of its  
7 interests as a result of the pending litigation.” *California ex rel. Lockyer v. United States*,  
8 450 F.3d 436, 441 (9th Cir. 2006). “[I]f an absentee would be substantially affected in  
9 a practical sense by the determination made in an action, he should, as a general rule,  
10 be entitled to intervene.” *Sw. Ctr. For Biological Diversity*, 268 F.3d at 822 (quoting  
11 Fed. R. Civ. P. 24 Advisory Committee’s Notes) (alteration in original); *see also*  
12 *Grumpy Cat Ltd. v. Grenade Beverage, LLC*, No. SA CV15-2063-DOC(DFMx), 2016  
13 WL 7507767 at \*4 (C.D. Cal. July 6, 2016) (finding the relief requested in the  
14 Complaint would impair or impede the intervenor’s property and licensing interests).

15           Lululemon’s allegations target the Moret Accused Products, among others, and  
16 Moret is best situated to ensure that facts are fully developed and presented in this  
17 case for purposes of defending against the claims respecting the Moret Accused  
18 Products. *See Indus. Tech. Research Inst.*, 2014 WL 5325709, at \*5 (manufacturer  
19 allowed to intervene because defendant customers lack the same knowledge of the  
20 accused products as the manufacturer); *Team Worldwide*, 2017 WL 6059303 at \*5  
21 (retailer’s relative lack of investment in and knowledge about a particular product  
22 compared to the product’s supplier or manufacturer is a factor that leans toward  
23 finding that the supplier’s interests would be impaired without intervention.). Among  
24 Lululemon’s requested relief, Lululemon seeks money damages and an injunction  
25 related to the Moret Accused Products. Because of its indemnification obligation to  
26 Costco, Moret is ultimately responsible for any potential adverse money judgment  
27 against Costco for the Moret Accused Products. *See Select Retrieval*, 2013 WL



6576861, at \*2 (noting that a customer may have less incentive to establish a manufacturer's product is non-infringing when the customer is indemnified by the manufacturer); *see also Indus. Tech. Research Inst.*, 2014 WL 5325709 at \*4 (manufacturer intervenor's indemnification obligation created a significantly protectable interest that would be impaired without intervention). Further, injunctive relief, if granted, would harm Moret's ability to sell, market, or distribute the Moret Accused Products. *LG Elecs. Inc.*, 211 F.R.D. at 365 (N.D. Cal. 2002) (If a "Court finds that [an Intervenor's] products infringe [Plaintiff's] patents, [the Intervenor] will no longer be able to sell them. Thus, the disposition of [Plaintiff's] motion to amend may as a practical matter impair or impede [Intervenor's] ability to protect its interest.").

Additionally, reputational harm to Moret may occur in the event of an adverse ruling, possibly affecting Moret's relationships with its current and potential customer base beyond Costco. *See Team Worldwide*, 2017 WL 6059303 at \*4 (citing *U.S. Ethernet Innovations, LLC v. Acer, Inc.*, 6:09-CV-448-JDL, 2010 WL 11488729, at \*2 (E.D. Tex. May 10, 2010)); *see also Indus. Tech. Research Inst.*, 2014 WL 5325709 at \*4 (disposition of litigation without intervenor may impair intervenor's relationships with other customers).

#### **4. The Existing Parties Do Not Adequately Represent Moret's Interests**

In determining whether an existing party adequately represents the interests of an absent party, a court evaluates: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary element to the proceedings that other parties would neglect." *See W. Watersheds Project*, 22 F.4th at 840-41 (quoting *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir.

2011)). To meet these requirements, a proposed intervenor must make only a minimal showing that the representation of their interests by other parties may be inadequate. *See W. Watersheds Project*, 22 F.4th at 840.

First, Costco does not have the same interest in defending the Moret Accused Products as Moret, and thus cannot adequately represent Moret's interests. *See Select Retrieval*, 2013 WL 6576861, at \*2 (while a manufacturer's and customer's overall goals may be similar, their interests are different and the customer cannot adequately represent the manufacturer's interests); *cf. Nazomi*, 2010 WL 11508956 at \*5 (finding that customers have a strong incentive to disclaim knowledge of infringement of products from supplier and blame the supplier for concealing the infringement). The Moret Accused Products are only a small portion of the thousands of products Costco sells, and adequately defending Moret's interests is not something that Costco can reasonably be expected to do when Costco also sells products that compete directly with Moret's products. *See Team Worldwide*, 2017 WL 6059303 at \*6 (a retailer and manufacturer's interests diverge where the retailer sells competing products alongside the manufacturer's products). Costco cannot be expected to have the same familiarity with as Moret with the technical aspects of the Moret Accused Products. *See LG Elecs. Inc.*, 211 F.R.D. at 365-66 (finding that a manufacturer's interest may be inadequately represented because the manufacturer knows more about its product than a customer, and thus can better defend the product).

Second, while Costco has an interest in defending against Lululemon's allegations, Moret has a greater interest in defending the products that Moret designed, imported, and sold to others outside of Costco. *See Ancora Techs.*, 2008 WL 4326788, at \*1 (finding of inadequate representation where defendants did not have a comparable incentive to intervenor's in defending intervenor's technology); *Select Retrieval*, 2013 WL 6576861, at \*2 (observing that customers lack the same incentive to prove a product is non-infringing as the product's manufacturer). For example,



Costco must defend other products from other suppliers in this lawsuit, with some of those products directly competing with the Moret Accused Products. *See Team Worldwide*, 2017 WL 6059303 at \*6 (a retailer may need to represent the interests of multiple competitor’s products, and thus not align with each competitors’ individual interests). Costco may seize upon arguments or strategies that maximize Costco’s position across all of the accused products at the expense of one or more of the suppliers, possibly at the expense of Moret and the Moret Accused Products. *See Nazomi*, 2010 WL 11508956 at \*5 (“Moreover, as [the supplier] argues, the defendants may seek to settle this lawsuit and stipulate to a finding of infringement, even though [the supplier] may stand to lose valuable market share from such a stipulation.”). The suppliers of the other accused products may seek to influence Costco to adopt strategies that run counter to or hamper positions Moret would prefer. *See Team Worldwide*, 2017 WL 6059303 at \*6 (Court noting that a showing of potential “adversity of interest, collusion, or nonfeasance on the part of the existing party”, such as a retailer having to represent the interests of competitors’ products, is enough to show inadequacy of representation for each competitor individually) (citing *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996)). Such competing interests are likely to render Costco’s representation of Moret’s interests inadequate.

**B. Alternatively, The Court Should Grant Moret Permissive Intervention Under Fed. R. Civ. P. 24(b)(1)(B)**

Should the Court not grant Moret’s motion to intervene as of right under Fed. R. Civ. P. 24(a)(2), Moret respectfully requests that the Court grant Moret’s motion to permissively intervene under Fed. R. Civ. P. 24(b)(1)(B) as Moret satisfies the requirements for permissive intervention for substantially the reasons set forth above.

Notably, the Ninth Circuit has clarified that “the independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-question cases when the proposed intervenor is not raising new claims.” *Freedom from Religion*

1 *Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011); *cf. Seasalt Del Mar, LP v.*  
2 *Five Greeks LLC*, No. 16CV00601 JAH-KSC, 2017 WL 3730411 at \*5 (S.D. Cal.  
3 Mar. 29, 2017) (District Courts have jurisdiction over federal trademark claims and  
4 defenses). Moreover, as set forth above, the motion is timely, since this lawsuit is in  
5 its early stages, with no responsive pleadings filed, no discovery started, and no initial  
6 conference scheduled. *See Nikon Corp. v. ASM Lithography B.V.*, 222 F.R.D. 647,  
7 651 (N.D. Cal. 2004) (permissive intervention granted where motion made during  
8 discovery after intervenor waited for almost a year after learning their products were  
9 the focus of the litigation). Lastly, the Moret Accused Products that were designed,  
10 imported, marketed, and sold by Moret to Costco for resale are directly at issue in this  
11 action, and therefore Moret's defenses share questions of fact with the main action  
12 filed by Lululemon against Costco. *See Nazomi*, 2010 WL 11508956 at \*5  
13 ("[P]roducts designed by [supplier] are directly at issue in this action; thus, the  
14 applicant's defense shares a question of fact with the main action."). Further, as set  
15 forth above, Ninth Circuit courts have found that suppliers and indemnitors of a  
16 reseller's accused products have a strong interest in defending the accused products,  
17 while Costco is not incentivized to fully and properly represent Moret's interests. *See,*  
18 *e.g., Ancora Techs.*, 2008 WL 4326788, at \*1 (intervenor with indemnification  
19 obligation met interest requirements and customers sued for infringement did not have  
20 a "comparable" interest in defending intervenor's technology); *accord Select*  
21 *Retrieval*, 2013 WL 6576861, at \*2 (Court finding that indemnification agreements  
22 are evidence of strong interest, and indemnified customers do not have the same  
23 interests to defend products as the manufacturers).

24 Finally, as noted above, Moret's intervention will not cause undue delay or  
25 prejudice to either of Lululemon's or Costco's rights, and neither party opposes this  
26 motion. *See supra*, pp. 5-6. Instead, Moret's presence as a party to this action will aid  
27 in generating full and complete discovery as common questions of fact predominate  
28

1 with the Moret Accused Products being the focus of the litigation. *See Select*  
2 *Retrieval*, 2013 WL 6576861, at \*3 (N.D. Ill. Dec. 13, 2013) (finding permissive  
3 intervention appropriate where common questions of fact regarding intervenor's  
4 products predominate.); *See Nikon Corp.*, 222 F.R.D. at 650-51 (N.D. Cal. 2004)  
5 (permissive intervenor's presence would make evidence more readily available for  
6 discovery, with questions of law and fact being nearly "identical").

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court should grant Moret's Motion to Intervene  
9 and allow Moret to intervene of right as a Defendant pursuant to Fed. R. Civ. P. 24(a),  
10 or in the alternative, allow Moret to permissibly intervene pursuant to Fed. R. Civ. P.  
11 24(b). Moret respectfully requests the Court's permission under either rule to file its  
12 proposed Answer and Affirmative Defenses to ensure that Moret will not waive any  
13 defenses it may have in this action. Moret provides a proposed Order herewith  
14 regarding the same.

15  
16  
17 Respectfully submitted,

18 Dated: August 26, 2025

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19  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CERTIFICATE OF COMPLIANCE – L.R. 11-6.1

The undersigned counsel of record for Proposed Intervenor, The Moret Group, certifies that this brief contains 5,099 words, complies with the word limit of L.R. 11-6.1.

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